

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.501 OF 2004

Madhav Namdeo Ugalmugale
Vs.
Suman Balkrishna Avhad & Ors.

...Appellant
...Respondents

Shri A.R. Shaikh i/by Shri V.Z. Kankaria for the
Appellant.

**CORAM : A. S. OKA, J.
DATE : JULY 27, 2006.**

P.C.:

1. Heard the learned Advocate appearing for the Appellant. The Appellant is the original Plaintiff. The Appellant-Plaintiff filed the suit for declaration of ownership and possession in respect of the suit flat which is located in a building of a co-operative housing society. The case of the Appellant-Plaintiff is that the first Respondent being closely related to the Appellant was allowed to occupy the suit flat and possession of the first Respondent was purely permissive. Contention of the Appellant-Plaintiff is that a sum of Rs.15,000/- paid by the first Respondent to him was by way of a security deposit. His case is that loan was taken by him from housing finance society for acquiring suit flat. According to the Appellant the first Respondent acting in collusion with the co-operative society paid sum of Rs.48,000/-

towards the instalments of the finance society and got her name entered as a member of the society. The contention of the Appellant-Plaintiff is that he has signed an agreement which was brought by the first Respondent without knowing contents thereof. The contention is that the agreement is without any consideration.

2. The Trial Court dismissed the suit on merits.

The Trial Court held that the first Defendant re-paid loan of Rs.48,000/- to the Maharashtra Housing Finance Society and that on the basis of documents executed by the Appellant-Plaintiff the first Respondent became member of the Society.

3. The findings of the Trial Court have been

confirmed in Appeal. In addition to the said findings the Appellate Court recorded a finding that the suit was not maintainable in view of the provisions of section 91 of the Maharashtra Co-operative Societies Act, 1960.

4. The learned Advocate appearing for the

Appellant submitted that the so called agreement

allegedly executed by the Appellant was without any consideration. He submitted that it is impossible to believe that there can be a sale transaction in respect of a flat in city of Nasik for consideration of only Rs.15,000/-.

5. The learned Trial Judge recorded a finding of fact that the first Respondent paid sum of Rs.48,000/- to the finance society towards re-payment of the loan taken by the Appellant-Plaintiff for acquiring the suit flat. Apart from this amount a sum of Rs.15,000/- has been admittedly paid by the first Respondents to the Appellant which the Appellant is referring as a deposit. The Appellant admitted the execution of the agreement but contended that he has signed the said document without knowing its contents. The resignation of the Appellant from membership and intimation to the housing society of transfer of the suit that are the documents produced on record which have been duly exhibited. The findings of the Trial Court have been generally approved by the first Appellate Court.

6. The Appellate Court has observed that the

Appellant admittedly belongs to legal profession and therefore, it is impossible to accept the case made out by him that he affixed his signature on the document in question without knowing the contents of the said document. Considering the aforesaid facts, it is obvious that there is no error in the view taken by the courts below. The findings of the courts below are based on appreciation of the oral and documentary evidence on record. There is no perversity in the findings. No substantial question of law rises. Second Appeal is dismissed with no orders as to costs.

JUDGE